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December 19, 2003

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Vistrionix, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

Re France Telecom Long Distance USA, LLC; *Ex Parte*
Presentation in CC Dkt. No. 96-45

Dear Ms. Dortch:

France Telecom Long Distance USA, LLC ("FTLD"), by its undersigned counsel, makes the instant *ex parte* filing in CC Dkt. No. 96-45.

In the Commission's consideration of changes in the Universal Service program,¹ FTLD would like to bring to the Commission's attention certain inconsistencies between the Commission's rules and the Universal Service Administrative Company's ("USAC's") practices regarding the assessment of contributions for the Universal Service Fund ("USF"). FTLD asks that the Commission take action to eliminate such inconsistencies when adopting the revised contribution methodology for USF.

Under Section 54.706(c) of the Commission's Rules, any "entity" required to contribute to USF whose "interstate end-user telecommunications revenues comprise less than

¹ See *In Re Federal-State Joint Board on Universal Service, Further Notice of Proposed Rulemaking and Report and Order*, CC Dkt. No. 96-45, FCC 02-43 (rel. Feb. 26, 2002). See also *In Re Federal-State Joint Board on Universal Service, Report and Order and Second Further Notice of Proposed Rulemaking*, CC Dkt. No. 96-45, FCC 02-329 (rel. Dec. 13, 2002) ("R&O and Second FNPRM").

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12 percent of its combined interstate and international end-user telecommunications revenues” shall contribute to USF “based only on such entity’s interstate end-user telecommunications revenues. .”² Thus, all providers which have interstate revenues consisting of less than 12 percent of their total interstate and international revenues must only contribute to USF based on their interstate telecommunications revenues. This rule is commonly referred to as the “12 percent” exception.

However, Section 54.706(c) of the Rules also states that the term “entity” is defined as “the entity that is subject to universal service reporting requirements” and “shall include all of that entity’s affiliated providers of telecommunications services.”³ Thus, in determining whether a carrier is eligible under the “12 percent” exception, it must consider not only its own revenues, but also the revenues of entities which are “affiliated providers of telecommunications services.”⁴

Under the plain meaning of this language, only affiliates which provide “telecommunications services” must be included in the calculations to determine eligibility for the “12 percent” exception. “Telecommunications service” is defined in Part 54 of the Commission’s Rules as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.”⁵ This definition, which directly mirrors the definition of “telecommunications services” contained in the Communications Act of 1934 (the “Act”), 47 U.S.C. § 153 (46)(2002), is referred to as “common carrier.”⁶ Thus, only the “common carrier” affiliates (not the private carrier affiliates) need to be included in the calculation for qualification under the “12 percent” exception.

² 47 C.F.R. § 54.706(c) (2002). Beginning April 1, 2003, carrier contributions will be based on projected interstate end-user telecommunications revenues, and qualification under the “12 percent” exception will be based on projected interstate and international revenues. See *R&O and Second FNPRM* at ¶¶ 28-39.

³ 47 C.F.R. § 54.706(c)(2002).

⁴ *Id.*

⁵ *Id.* at § 54.7.

⁶ *National Association of Regulatory Utility Commissioners v. FCC*, 553 F.2d 601 (D.C. Cir. 1976). See also *In Re Federal-State Joint Board on Universal Service, Report and Order*, CC Dkt. No. 96-45, FCC 97-157 at ¶ 785 (May 8, 1997)(stating that the definition of “telecommunications services” which includes the phrase “directly to the public” is intended to encompass only telecommunications provided on a common carrier basis).

However, the plain language of Section 54 706(c) of the Rules is inconsistent with the Instructions contained in the Telecommunications Reporting Worksheet, and with USAC's implementation of the program's contribution requirements. The Instructions to the FCC Form 499-A/Q state that "all reporting affiliates or commonly controlled entities should have the *identical* name appearing" as the "holding company" on the applicable line.⁷ Thus, the Instructions to the Telecommunications Reporting Worksheet do not distinguish between common carrier and private carrier affiliates. In order to determine a contributor's qualification under the "12 percent" exception, it appears that USAC, which reviews the Worksheet filings, identifies "affiliated" companies through the designated "holding company" on the FCC Form 499-A/Q.⁸ As such, USAC combines the interstate and international revenues of all affiliated companies, without regard to their common carrier or private carrier status in violation of Section 54 706(c) of the Rules.

In order to avoid improper application of the contribution requirements to the companies affiliated with France Télécom S.A. operating in the United States, only FTLTD and the other common carrier affiliated with France Télécom are reporting the same primary holding company in the Telecommunications Reporting Worksheet, FCC Form 499-A/Q, line 105.⁹ The companies affiliated with France Télécom S.A. and operating in the United States have taken this action in order to prevent USAC from improperly including the revenues of private carriers owned or controlled by France Télécom S.A. in the calculation for qualification under the "12 percent" exception. The companies affiliated with France Télécom S.A. are also disclosing this action directly on their Telecommunications Reporting Worksheets.

In the Commission's consideration of changes to the contribution methodology for the Universal Service program, to the extent that the "12 percent" exception will continue to apply, the Commission should direct USAC to only include the revenues of affiliated common carriers when determining eligibility for the "12 percent" exception under Section 54 706(c) of the Rules, or clarify in the Telecommunications Reporting Worksheet that only common carrier affiliates are required to list the same primary holding company.

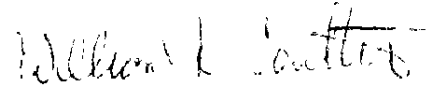
⁷ See Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, p 12.

⁸ See FCC Form 499-A, line 106 and FCC Form 499-Q, line 105.

⁹ The common carriers affiliated with France Télécom S.A. and operating in the United States are: FTLTD and Equant Inc. The private carriers affiliated with France Télécom S.A. and operating in the United States are: GlobeCast Incorporated and FTCS.

Kindly direct any questions regarding this filing to the undersigned

Best regards,

A handwritten signature in black ink, appearing to read "William K. Coulter". The signature is written in a cursive, slightly slanted style.

William K. Coulter
Counsel to France Telecom
Long Distance USA, LLC